

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 1:19-cv-12597

DAVID J. HOWE,

Plaintiff,

vs.

U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE RMAC TRUST SERIES
2016-CTT and
RUSHMORE LOAN MANAGEMENT
SERVICES LLC,

Defendants.

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE

Pursuant to FRE 201, Defendants U.S. Bank National Association, as Trustee for the RMAC Trust Series 2016-CTT (the “Trust”) and Rushmore Loan Management Services LLC (“Rushmore”) (together, the “Defendants”) submit the following request to judicially notice certain filings from United States Bankruptcy Court District of Massachusetts (Worcester) Bankruptcy Petition #: 10-43053 (“2010 Bankruptcy”), certain filings from United States District Court District of Massachusetts (Boston) Civil Docket for Case #: 1:12-cv-11428-WGY (“2012 Matter”) and certain land records recorded with the Middlesex (North) Registry of Deeds and the Middlesex (South) Registry of Deeds, including:

1. The Home Affordable Modification Agreement with Plaintiff dated August 6, 2010 (“Loan Modification Agreement”) with J.P. Morgan Mortgage Acquisition Corp attached as **Exhibit A** to Defendants’ Motion to Dismiss Plaintiff’s Verified Complaint and re-attached hereto at **Exhibit 1** (2010 Bankruptcy, Dkt. No. 14-1, pages 19-30).

2. Howe's Opposition to J.P. Morgan Mortgage Acquisition Corp.'s Motion for Relief from Stay dated January 13, 2011 attached as **Exhibit B** to Defendants' Motion to Dismiss Plaintiff's Verified Complaint and re-attached hereto at **Exhibit 2** (2010 Bankruptcy, Dkt. No. 45).

3. The Bankruptcy Court's March 10, 2011 Order granting J.P. Morgan Mortgage Acquisition Corp.'s Motion for Relief from Stay after Howe withdrew his opposition and objection attached as **Exhibit C** to Defendants' Motion to Dismiss Plaintiff's Verified Complaint and re-attached hereto at **Exhibit 3** (2010 Bankruptcy, Dkt. Nos. 58-59).

4. Howe's Opposition to U.S. Bank National Association not in its individual capacity but solely as Legal Title Trustee for LVS Title Trust I Motion for Summary Judgment attached as **Exhibit D** to Defendants' Motion to Dismiss Plaintiff's Verified Complaint and re-attached hereto at **Exhibit 4** (2012 Matter, Dkt. No. 12).

5. Powers of Attorney recorded with the Middlesex (North) Registry of Deeds on December 20, 2017 in Book 31740, at Page 242 and the Middlesex (South) Registry of Deeds on September 23, 2019 in Book 73323, at Page 435 attached as **Exhibit G** and **Exhibit H** respectively to Defendants' Motion to Dismiss Plaintiff's Verified Complaint and re-attached hereto as **Exhibit 5** and **Exhibit 6**.

6. Matters of public record may be judicially noticed subject to Fed. R. Evid. 201(b)(2) without prior notice to the parties. Fed. R. Evid. 201(e).

7. As stated in *Giragosian v. Ryan*, 547 F.3d 59, 65 (1st Cir.2008), a court may consider "documents incorporated by reference [in the complaint], matters of public record, and other matters susceptible to judicial notice" without converting a motion to dismiss into a motion for summary judgment (internal quotation marks omitted) (alteration in original)).

8. “[P]ublically-recorded real estate instruments and notices are the proper subject of judicial notice, unless their authenticity is subject to reasonable dispute.” *Mulhall v. Wells Fargo Bank, N.A.*, 241 F. Supp. 3d 1046, 1050 (N.D. Cal. 2017).

Respectfully submitted,
DEFENDANTS, U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE FOR THE RMAC
TRUST SERIES 2016-CTT, AND
RUSHMORE LOAN MANAGEMENT SERVICES
LLC,
By their attorneys,

Dated: January 2, 2020

/s/ Christopher J. Williamson
Ryan S. Moore (BBO #673069)
Christopher J. Williamson (BBO #690589)
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CERTIFICATE OF SERVICE

I, Christopher J. Williamson, hereby certify that on January 2, 2020, a true and correct copy of the Defendants’ Request for Judicial Notice was served via ECF on the following:

Josef Culik
Kristin L. Thurbide
Culik Law PC
101 Federal St., Suite 1900
Boston, MA 02110

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 2, 2020

/s/ Christopher J. Williamson
Christopher J. Williamson, BBO No. 690589